

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 3 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy
of the judgement?
 4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

BACCAROSE PERFUMES AND BEAUTY PPRODUCTS LTD.

Versus

GEEKAY EXIM (INDIA) LTD.

Appearance:

MR TUSHAR MEHTA AND KETAN D SHAH for Petitioner
MR SANJAY M AMIN with MR. NITIN M.AMIN for
Respondents 1 to 11
MR.AJ DESAI, APP for Respondent No. 12

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/04/98

ORAL JUDGEMENT

Heard learned Advocates Mr.Tushar Mehta and Ketan D.
Shah for petitioner, learned Advocate Mr. Sanjay M.Amin
for Respondents No.1 to 11 and learned APP Mr. A.J.
Desai for Respondent No.12 - State. The petitioner has

challenged the legality and propriety of the order passed by learned JMFC, Gandhidam, District Kachchh Bhuj, below Exhibits 27, 31, 26 and 28 in Criminal Case No. 299 of 1996 dated 6.12.1997.

2. The petitioner has filed above stated Criminal Case No. 299 of 1996 in the court of JMFC, Gandhidam, District Kuchchh - Bhuj against Respondents No. 1 to 11 under Section 138 of the Negotiable Instruments Act. That court has issued summons to present respondents No.1 to 11 as accused of the said matter and petitioner having appeared through advocate had claimed exemption from personal appearance in the court on various dates. The present petitioner as complainant thereafter moved above stated application and requested the court to issue non-bailable warrant against the accused for their non-appearance in the court. That vide impugned order, learned JMFC has rejected the application of the petitioner and has granted permanent exemption to respondents No. 1 to 11 and has ordered to record the plea of the accused through their advocate.

3. Shri Ketan D. Shah has referred to and relied on the order and had contended that order of learned JMFC is contrary to the settled proposition of law and, therefore, the same should be set aside and quashed.

4. On close scrutiny of the order, it appears that learned JMFC has followed the decision rendered by this court and reported in 1986 GLH page 126 and 1995 (2) GLH (UJ) page 7 while deciding the said application. That grant or refusal of exemption to the accused under Section 205 and/or 313 of the Cr.P.C. is sole discretion of the Presiding Officer of the Court depending on the facts and circumstances involved in each matter. In the instant case, it appears that learned JMFC has rightly exercised the discretion while granting exemption to respondents No. 1 to 11 in the facts and circumstance of the present case. Hence, I do not find any illegality or procedural irregularity resulting into miscarriage of justice.

6. That as a result, the petition fails and deserves to be rejected. However, in the facts and circumstances of the case, the trial court is directed to proceed with the said Criminal Case No. 299 of 96 and to complete the same as expeditiously as possible on presentation of evidence on behalf of the petitioner. Rule is discharged. No order as to costs.

p.n.nair